and which therefore cannot have been in the contemplation of the legislatures by which these Acts were passed. I have no hesitation, therefore, in finding that there is no statute law which rendered the performance of *Sin Chew* ceremonies superstitious or void.

As regards the Common Law, it is pointed out by Lord Buckmaster in *Bourne* v. *Keane* at page 863 that it cannot be successfully contended that a gift to provide Masses for the souls of the dead was at all times contrary to the common law. He adds: "The common law of Ireland does not differ from the common law of England and Palles, C.B. in a judgment in the case of *O'Hanlon* v. *Logue*, I.R. (1906), 1 Ch. page 247, showed with great distinctness that in Ireland such a gift is good." If by the common law of England Masses for the dead were not superstitious or void, there can again be no possible reason for coming to a different conclusion in the case of gifts for *Sin Chew* purposes.

It is to be observed that in the case of *Choa Choon Neo* v. *Spottiswoode*, Woods' Or. Cases Appendix, Sir Peter Maxwell makes it perfectly clear that the only ground on which he held that the bequests in that case were void was because they offended the rule against perpetuities and were not charitable. On page 8 he says "On this ground alone, and not because the law condemns as unsound the theological dogma which such a legacy implies.....I should consider a bequest for masses for departed souls void." From these words it may be inferred that Sir Peter Maxwell would have decided in favour of the gift if it had not offended the rule against perpetuities.

I have no doubt, therefore, that gifts for *Sin Chew* purposes are neither superstitious nor void under the law of the Straits Settlements, and it is satisfactory to note that in the countries upon which England has conferred the boon of her common law, gifts for Masses for the repose of the souls of the donor or of any other person are held not to be gifts for superstitious uses or void at law.

In the report of *Bourne* v. *Keane* Lord Atkinson at page 882 shows that it has been so held in the case of Ireland (*O'Hanlon* v. *Logue*, I.R. (1906), 1 Ch. page 247), in the case of Canada (*Elmsley* v. *Madden*, 18 Grant p. 386), in the case of New Zealand (*Carrigan* v. *Redwood*, 30 N.Z.L.R. page 244), in the case of Australia (*Nelan* v. *Downes*, 23 C.L.R. p. 546), and in the case of the U.S.A. (*Holland* v. *Alcock*, 108 N.Y. page 312 and *in re Schouler*, 134 Mass, page 426). As regards the Sacrament of the Mass therefore a consistent opinion in favour of the validity of gifts for such purposes has been held by Courts of the highest authority throughout the British Empire and the United States of America, and it is fitting and proper that the same validity should be accorded to gifts for the performance of ceremonies which are an essential feature of the religious rites of the Chinese and which have been observed by them for countless generations before the present Chinese inhabitants of the Straits Settlements sought the protection of the laws under which they now live.

In the case of No. 56 Church Street, therefore, the trust must continue in accordance with the terms of the Will until the period of distribution arrives.

The costs of all parties must be taxed as between solicitor and client and paid out of the proceeds of sale of No. 241 Teluk Ayer Street.

Order accordingly.

Solicitor for the plaintiffs— *Allen & Gledhill.*

Solicitors for person appointed to represent residing legaters— *John G. Campbell & Co.*

Solicitor for Khoo Guan Hoe— *Drew & Napier.*

(Original Civil Jurisdiction)

Murison, C.J.

December 31, 1932.

YOKOHAMA SPECIE BANK LTD.....Plaintiffs.

vs.

1. LEE KWOCK JOU

2. WING TAI LOONG & CO. .....Defendants.

(Singapore Civil Suit No. 568 of 1932)

Bill of Exchange—Extension of date for payment —whether a re-acceptance—liability for stamp duty—signature of Manager—personal liability—Chop or seal of firm—whether a signature.

Where on a bill of exchange the date of payment is extended and a new one substituted therefor the alteration is not material and no new stamping is required.

International Banking Corporation v. *Pestonji & Co.*, (1925) I.L.R. 49 Bom. 351 not followed.

Where a person accepts a bill and signs his name as manager he is not exempted from liability. *Mare* v. *Charles*, (1856) 5 E. & B. 978; *Leadbitter* v. *Farrow*, (1816) 5 M. & S. 345; *Courtauld* v. *Saunders*, (1867) 16 L.T.N.S. 562; *Nicholls* v. *Diamond*, (1853) 9 Exch. 154 and *Jones* v. *Jackson*, (1870), 22 L.T. 828 applied.

Chapman v. *Smethurst*, (1909) 1 K.B. 927 distinguished.

A firm whose chop or seal is affixed to a bill of Exchange without an accompanying signature is not liable unless evidence is adduced to show that the bill was chopped or stamped with the authority of the partners.

In re London and Mediterranean Bank, (1868) L.R. 3 Ch. 651 applied. *Raman Chetty* v. *Ng Siang Ee*, (1904) 9 S.S.L.R.90 referred to.

Action tried before Murison, C.J.

The facts and arguments appear from the judgment below.

Vaux for the Plaintiffs.

Mundell for the 1st Defendant.

Cur. Adv. Vult.

Murison, C. J. The Plaintiffs in this case sue the Defendants as acceptors of certain bills of exchange drawn upon the Defendants and endorsed by the respective payees to the Plaintiffs and presented for payment by the Plaintiffs and dishonoured. Interest is also claimed at 5% from the 31st May, 1932 to date of payment or judgment.

There are fifteen bills:

Ten of these bear dates in July, August or September, 1931. These ten bills are all drawn by Tai Cheong & Company for amounts varying from Yen 3,300 to Yen 8,500 which is equivalent to from $1,620 to $4,663 with interest. Of these ten bills three are drawn in favour of the Nomura Bank, Limited. The other seven are drawn in favour of the Kobe Okazaki Bank, Limited. The dates of acceptances vary from the 12th August, 1931 to the 9th October, 1931 and the bills are payable on dates between 13th March, 1932 and the 26th May, 1932.

The other five bills are dated between the 19th August and the 17th September, 1931. They are drawn by one Tuck Wo for sums varying from Yen 1,600 (= $1,293 with interest) to Yen 2,455 (= $1,911 with interest) on Kobe Okazaki Bank Limited. The acceptances are dated between the 3rd and 30th September, 1931, and the bills are payable on dates between the 30th March and the 27th April, 1932.

All of the fifteen bills are drawn at 60 or 45 days after sight and are accepted by the Chop of the second Defendant firm being stamped on them with the first Defendant's name added. In all cases except three the word "Manager" is added to the signature of the first Defendant. In the other three that word is not added.

The total sum claimed is with interest up to the 31st May, 1932, $46,134.49, but further interest is claimed to the date of judgment.

Judgment in this case has already been given against the 2nd Defendant, so that the only question before me is the liability of the 1st Defendant.

The 1st Defendant in his statement of defence disclaims any liability. He says that on the 10th September, 1931 he acted at the request of three of the partners in the 2nd Defendant firm, as manager of the firm from that date till the 23rd February, 1932. He had a power of attorney from these partners from the 24th September, 1931 until the 23rd February, 1932, when it was revoked.

The 1st Defendant further denies either that any of the bills were ever presented to him for acceptance, or that he ever accepted any of them, in his personal capacity.

Early in the hearing Mr. Mundell, for the 1st Defendant, raised a point of importance. The date of payment of the bills had been extended, the old date being crossed out and a new date substituted. This, says Mr. Mundell, constitutes a re-acceptance of the bills which therefore ought to have been stamped as new bills. As they are not stamped, he says, they are not admissible in evidence and the Plaintiff's claim must fail.

Mr. Vaux, for the Bank, gave an undertaking to stamp the bills as new bills and Mr. Mundell at first did not object, but afterwards withdrew from that position and objected.

Upon this preliminary point two issues were argued: first, whether the bills required stamping; and secondly, if they did, whether the Bank was the proper party to stamp them.

The question whether the bills required stamping as new bills consequent upon the alteration of the time of payment depends upon section 64 of the Bills of Exchange Act 1882. That section is as follows:

> "64.(1) Where a bill or acceptance is materially "altered without the assent of all parties liable on the "bill, the bill is avoided, except as against a party who "has himself made, authorised or assented to the altera-"tion, and subsequent indorsers.
>
> "Provided that where a bill has been materially "altered, but the alteration is not apparent, and the bill "is in the hands of a holder in due course, such holder "may avail himself of the bill as if it had not been "altered, and may enforce payment of it according to its "original tenour.
>
> "(2). In particular the following alterations are "material, namely, any alteration of the date, the sum "payable, the time of payment, the place of payment, "and, where a bill has been accepted generally, the "addition of a place of payment without the acceptor's "assent".

The point, therefore, is whether the alteration of the time of payment in these bills was a material alteration. It has been held that any alteration is material "which would alter the business effect of the instrument if used for any business purpose" (Brett L. J. in *Suffell* v. *Bank of England*, (1882) 9 Q.B.D. 555 at page 568.) And the principle that "any alteration which affects the rights of the parties "to a bill" is a material alteration was affirmed in *Kock* v. *Dicks* (1932) W.N. 232.

Mr. Mundell, for the 1st Defendant, says there is a new contract. There is consideration, he says, arising from the giving of further time. Further, he says, the alteration constitutes an acknowledgment of the debt which would extend the period of limitation. Mr. Vaux, on the contrary, says the extension of time was a *nudum pactum.*

Mr. Mundell's view was supported by the decision in the *International Banking Corporation* v. *Pestonji & Company*, (1925) I.L.R. 49 Bombay 351. In that case the Plaintiffs were holders for value of nineteen bills of exchange accepted by the Defendants, payable 90 days after sight. The Defendants, being unable to meet the bills on the due dates, asked for an extension of time. This was agreed. The Defendants re-accepted the bills and the Plaintiffs (as in our case) altered the red ink memorandum of the due date which appeared at the right-hand top corner of each bill, so as to

conform with the agreed extension of time for payment. It was held that the extension of time constituted a new bill in each case, that new stamps were necessary, and that as the bills were not so stamped they were inadmissible in evidence.

The decision in this case, however. was disapproved by the Privy Council in *Pestonji & Company* v. *Cox & Co.*, (1928) 55 Indian Appeals 353. There the facts were the same as in this case; that is an extended date for payment was agreed and alteration made on the bills accordingly, but there was no alteration of the bills as originally drawn. It was held that there was no discharge of the bills as originally drawn and that no new stamping was necessary. Viscount Sumner said (at page 358):—"As to the material alteration, the "answer is that the bill itself was not altered at all. Of "course, if the due date on the face of the bill had been "altered, the alteration would have been material, but "what was done did not, in fact, affect the bill, nor was "it done with any such intention. The date formed no "part of the bill, nor did its alteration affect the contract. "It was a mere docket for office purposes. If a slip of "paper, with the date on it, had been pinned on to the "bill, the two holes made by the pin in the paper "would have been no less liable to be called an "alteration."

With the decision in the *International Banking Corporation* v. *Pestonji*, (*supra*) the Board said they did not agree unless the fact of re-acceptance with the circumstances under which it took place in that case, which were not fully stated, introduced a sufficient distinction. In the present case no facts have been brought to my notice which could be said to distinguish it from the position in the Privy Council case just quoted.

I hold, therefore, that there was no material alteration in the original bills, that therefore no new stamping is required, and that the bills are, therefore, admissible in evidence. This answers the first of the two issues in the preliminary point; the second, if my view of the first is right, does not arise.

I now come to the substantive contention in the action. The 1st Defendant says that in signing as manager he did not accept the bills personally. The law on this question is laid down in section 26 of the Bills of Exchange Act, which is as follows:—

> "26.(1). Where a person signs a bill as drawer, "indorser, or acceptor. and adds words to his signature, "indicating that he signs for or on behalf of a principal, "or in a representative character, he is not personally "liable thereon; but the mere addition to his signature of "words describing him as an agent, or as filling a repre-"sentative character, does not exempt him from personal "liability.
>
> "(2). In determining whether a signature on a bill "is that of the principal or that of the agent by whose "hand it is written, the construction most favourable to "the validity of the instrument shall be adopted."

An example of the first class of cases (where there is no liability) are a *signature "per procurationem"* (*Mare* v. *Charles*, (1856) 119 English Reports at page 747, Crompton J.). The words necessary to bring an acceptor within this category must be very definite. Thus, Lord Ellenborough in *Leadbitter* v. *Farrow*, (1816) 5 M. & S. at page 349 said:

> "Is it not a universal rule that a man who puts "his name to a bill of exchange thereby makes "himself personally liable, unless he states upon "the face of the bill that he subscribes it for another "or by procuration of another, which are words of "exclusion? Unless he says plainly 'I am the mere "scribe' he is liable."

In another case (*Courtauld* v. *Saunders*, (1867) 16 L.T. N.S. 562) money was lent to a Company and a note given in the form: "We promise to pay etc."

It was signed in the following form:—

"H.W.S." }
"W.N." | Directors of the Financial
"R.J.B." } Insurance Company Limited
"W.W.R." |
"C.C.G., Manager." }

And all the signatories were held liable as makers.

But on the contrary in *Mare* v. *Charles*, (*supra*) an order to pay to the drawer's order at three months after date a sum of money "for value received in machinery supplied the adventurers H.....", was directed "to Mr. W.C." W C. wrote upon it "Accepted for the Company, W.C. Purser". It was held that W.C. was personally liable as acceptor of the bill. Lord Campbell said (page 746): "If a bill be drawn on me "I must accept it so as to make myself personally liable "or not at all; for none but the drawee can accept. I "think, therefore, that when a drawee accepts a bill, "unless there be on the face of the bill a distinct dis-"claimer of personal liability, he must be taken to accept "personally."

This decision followed that in *Nicholls* v. *Diamond*, (1853) 9 Exch. 154.

The principle of these cases is *ut res magis valeat quam pereat;* for there is no acceptance if the argument that one signs on another's account is to prevail. Such a signature means that the signer relies on someone else to indemnify him; but, whatever his motive, it cannot make the acceptance inoperative.

Similarly in *Jones* v. *Jackson*, (1870) a bill directed to "Messrs. J. & S. joint managers of" a certain company was accepted by J. & S. "as joint managers" of the company. They were held personally liable.

The only doubt I have had in my mind about this point arises from a perusal of *Chapman* v. *Smethurst*, (1909) 1 K.B. 927 There a promissory note was signed by the managing director of a company in this form:—

"Six months after demand I promise to pay to Mrs. "M. Chapman the sum of £100 for value received "together with six per cent interest per annum. J. H. "Smethurst's Laundry & Dye Works Ltd.. J. H. "Smethurst. Managing Director."

In an action upon the note it was held (reversing Channell. J.) that it was the note of the Company and that the defendant was not personally liable. The case appears to have turned on section 47 of the Companies' Act 1862 which says that a promissory note shall be deemed to have been made on behalf of the Company if it is made in the name of any person acting under the authority of the Company. This appears to put the liability of a person who signs for a Company on rather a different footing from that of those who sign for persons other than companies. But it is very difficult to reconcile this decision with that in *Courtauld* v. *Saunders*. (*supra*) which although coming under the same section (section 47 of the Companies' Act) was decided on the general principles which I have referred to, for example that laid down (quoted above) by Lord Ellenborough. I suppose *Chapman* v. *Smethurst* was rightly decided, but it is a curious case. I prefer to follow the stream of authority to which I have referred.

I hold. therefore. that the 1st Defendant is liable personally upon such of the bills in this case as are addressed to him and are accepted by him whether with or without the words "as manager."

In the view I have taken of this case I do not have to decide the question raised that where a chop is affixed the signature of a partner or agent is not necessary, but I may make some remarks about it.

I have been referred to an oral judgment on this point by Deane J. and myself on appeal in District Court Summons No. 3298 of 1927, but there is no record of the judgment except that the appeal was dismissed. On reference to the proceedings and judgment in the District Court it appears that the case involved a number of points and was of a special nature. I cannot feel in any way bound by this decision.

Section 91 (1) of the Bills of Exchange Act 1882 requires that the signature to a bill should be signed by the person whom it is sought to make liable, but it is sufficient if someone duly authorised thereto signs it.

Whether a chop alone is a signature within the meaning of this section is a question of some difficulty. It has been suggested that *In re London and Mediterranean Bank*, (1868) L.R. 3 Ch. at pages 653, 654 is an authority for the proposition that an impressed stamp is a sufficient signature. Thus Page Wood. L.J. *loc. cit* says.—

"I am not at all inclined to dispute————that "the authority of the two (liquidators) does not "necessarily mean that you should find the names of "the two liquidators on the piece of paper which "forms the bill. But though the liquidators might "————give an authority to someone, yet "that must be as to the acceptance of a specific bill "or other specific thing that is to be done; and "they may then say that their clerk or agent, who-"ever it may be. shall sign for them; or it may be "impress a printed mark which may be taken for "their signatures. That may be a good acceptance "under the 91 (1) section; but at least you must "have the judgment of the two liquidators upon the "particular bill which they authorized to be so "signed."

And later (page 654) he says:—

"Therefore if the holder finds on the face of the "bill no trace of the requisite authority, it is his "own fault if he takes a bill of that description, "and the onus is then thrown upon him of showing "that the statute has been complied with."

I take this to be authority for the proposition that an impressed stamp alone is not enough unless proof is forthcoming that the stamp was impressed with the authority of the persons whom it is sought to make liable.

In my opinion it would be going much too far to say that an impressed stamp of any chop standing alone is sufficient to make the chop liable. I know of no authority for such a proposition, and I am confirmed in my view of the matter by the evidence in this case of Mr. Karchiro Sueyoski who has been for sixteen years in the Plaintiff Bank. He says:

"I have never seen a cheque drawn by a chop "without a signature."

And again:—

"I have never known a draft accepted by a chop "without a signature. I am speaking of the general "practice of Chinese firms."

The witness is no doubt interested but I believe he is speaking the truth.

In the local case of *Raman Chetty* v. *Ng Siang Ee* (1904) 9 S.S.L.R. 90 at page 95 the question was asked, but not decided.

In my opinion a chop standing alone on a bill of exchange without any signature does not make the partners of the chop liable unless evidence is adduced to show that the chop was affixed with the authority of the partners.

I ought finally to refer particularly to one of the bills (that for Yen 1.600 (No. 12 in Exhibit A)). It is drawn only on the 2nd Defendant Company. It is not, as the others are, drawn by name of the 1st Defendant. This, however, makes no difference, for the firm name is merely a compendious form of expressing the names of all the partners in the firm, and although he was not actually a partner, he held at the date of acceptance, namely, 30th September, 1931, a power of attorney for the partners. The power was in force from the 24th September, 1931 until its revocation,

as I have previously stated, on the 23rd February, 1932.

For these reasons I am of opinion that the Plaintiffs must succeed on the whole of their claim against the 1st Defendant, and I give Judgment for the Plaintiffs accordingly, with costs.

Judgment accordingly.

Solicitors for the plaintiffs— *Rodyk & Davidson.*

Solicitors for the first Defendant— *Sisson & Delay.*

(Original Civil Jurisdiction)

Prichard, J.

February 28, 1933.

RAHAMIN PENHAS and ABRAHAM PENHAS trading as RAHAMIN PENHAS.....Plaintiffs

vs.

KISHNAN CHAND & SONS, and the firm of KANSHIRAM PARMANAND.....Defendants

(Penang Suit No. 11 of 1933)

Sale of goods—purchaser taking possession subject to Trust Receipt—subsequent fraudulent sale—good faith—notice of warranty of authority—onus of proving —Factors Act 1889, Ss. 2 (1), 9.

The plaintiffs agreed to sell to the first defendants 540 cases of vegetable fat and drew on them 3 several Bills of Exchange to cover the price thereof. They discounted the bills with the Hongkong and Shanghai Bank (Singapore Branch) and delivered 2 Bills of Lading as security for due acceptance and payment of the Bills of Exchange. The Bank was not to part with possession of the goods except to the first defendants who were to hold the goods on trust under a Trust Receipt. The first defendants accepted the bills of exchange and signed a Trust Receipt. The Bills of Lading were then handed to the first defendants who afterwards took possession of the goods. They delivered 535 cases of the vegetable fat to the second defendants at an agreed price. The first defendants, however, did not make any payments to the Bank. Their Bank later assigned the Bills of Exchange together with the appurtenant rights to the plaintiffs.

In an action by the plaintiffs against the defendants for the return of the cases of vegetable fat or their value and damages for their conversion:—

Held, on the evidence, that the 2nd defendants had not discharged the onus on them of proving good faith and absence of notice of warranty of authority; the plaintiffs in the circumstances should succeed in the action.

Heap v. Motorists' Advisory Agency, (1923) 1 K.B. 577 applied.

ACTION tried by Prichard, J.

The material facts are fully set out in the Judgment below.

Hume & Pooley for the plaintiffs.

Hogan & Saunders for the 2nd defendants.

The 1st Defendants did not enter appearance.

Cur. Adv. Vult.

Prichard, J.—This is a claim for the return of a certain number of cases of vegetable fat (ghee) or their value, and damages for their conversion.

The first defendants did not enter an appearance. In this firm the manager was named Narayan Dass, and his father Kishan Chand.

The following facts were proved.

All the parties are merchants. On the 23rd December, 1932 the first defendants agreed to purchase from the plaintiffs 540 cases of 'cowboy' brand of vegetable fat (ghee) at $12.50 a case. On the 24th December the plaintiffs, as owners of the ghee, drew three Bills of Exchange on the first defendants, for $2,253, $2,249 and $2,248 respectively. The first of these was payable 45 days, the second 60 days, and the third 75 days, after sight. On the same day they discounted the bills with the Hongkong & Shanghai Bank (Singapore branch) and endorsed and delivered to the Bank two bills of lading each covering 270 cases as security for the due acceptance and payment of the Bills of Exchange, and they instructed the Bank not to part with the possession or control of the goods except to the first defendants and upon the terms that the first defendants should hold the goods upon trust under a Trust Receipt. The first defendants agreed to these terms and they accepted the Bills of Exchange and signed the Trust Receipt, which runs as follows:—

" TRUST RECEIPT

" (Hypothecated Shipping Documents)

"S.S. Stamp 25c. Penang, 28th December, 1932

"To the

" Hongkong & Shanghai Banking Corporation,

" (Incorporated in Hongkong)

" Penang.

" In consideration of your handing to $\frac{me}{us}$ Shipping "Documents for goods, as per particulars at foot, "hypothecated to the Bank as collateral security for the "due payment of the undermentioned drafts drawn "upon $\frac{me}{us}$ by Messrs. Rahiman Penhas, Singapore and "accepted by us $\frac{I}{we}$ hereby engage to land, store, and "hold the said goods as Trustee for and on behalf of "the Bank, and in the event of the goods or any portion "thereof being sold and delivered before full payment "of the said drafts the proceeds of such sales shall be "received by $\frac{me}{us}$ as Trustee for the Bank, and paid to "the Bank when and as received $\frac{I}{we}$ at the same time "specially advising the Bank of the account on which "such payment is made.

" $\frac{I}{we}$ also undertake to keep the goods fully insured "against fire as against marine risks and to hand over to "the Bank all amounts received from the Insurers, the "Policies of Insurance being in the meantime held "by $\frac{me}{ns}$ as Trustee for and on behalf of the Bank.

" Yours faithfully,

" Kishnan Chand & Sons.

" Sd. N. Dass

" Manager

" (Penang Branch)